



Community Development
39550 Liberty Street
Fremont, CA 94538

ZONING ADMINISTRATOR



General Order of Business

1. Preliminary (Call to Order – 2:00 p.m.)
2. Public Hearing Items
3. Adjournment

Addressing the Zoning Administrator

Any member of the public may speak on any item under review by the Zoning Administrator after “being recognized” by the Zoning Administrator. After the Zoning Administrator recognizes you, state your name and address. Generally, after the item is introduced, the order of presentation begins with staff introduction and presentation. The project applicant or their authorized representative may then comment. Next, interested members of the public may speak. Additional comments by the applicant or staff, as appropriate, may follow. At the close of testimony, the matter will return to the Zoning Administrator for discussion and action.

General Information

The Zoning Administrator usually holds hearings on the first and third Mondays of each month, except September (9/15 only). Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the Planning Division (510) 494-4440.

Plans and other supporting documents are available at the Development Services Center at 39550 Liberty Street (between Stevenson Boulevard and Walnut Avenue). Plans and other supporting documents may be viewed any day until noon the day of the meeting. Copies will be provided at cost when feasible. The Development Services Center is open 8:00 a.m. to 4:00 p.m., Mondays through Thursdays; and 8:00 a.m. to 12:00 p.m., Fridays.

We appreciate your interest in the conduct of your City’s business. Information about the City or the items discussed in this report may be referred to:

Zoning Administrator
City of Fremont
Planning Division
39550 Liberty Street, P.O. Box 5006
Fremont, CA 94537-5006
Telephone: 510-494-4440

City Staff
Barbara Meerjans, Zoning Administrator

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AGENDA
ZONING ADMINISTRATOR PUBLIC HEARING MEETING 2:00 P.M.
CITY OF FREMONT, CALIFORNIA
39550 LIBERTY STREET
RANCH HIGUERA CONFERENCE ROOM

MARCH 16, 2009

1. PRELIMINARY

1.1 CALL TO ORDER

2. CONSENT CALENDAR - NONE

NOTICE: ITEMS ON THE PUBLIC HEARING CALENDAR MAY BE MOVED TO THE CONSENT CALENDAR IF NO ONE IS PRESENT TO SPEAK ON THE ITEMS. ALL APPLICANTS AND INTERESTED PERSONS ARE ADVISED TO BE PRESENT AT THE START OF THE MEETING.

3. PUBLIC HEARING ITEMS

Item 1. FREMONT TIMES SQUARE – 46100 WARM SPRINGS BOULEVARD – (PLN2007-00281) – to consider an amendment to an approved Zoning Administrator Permit (PLN2007-00281) and Vesting Tentative Parcel Map 9629 to create three legal parcels with commercial condominiums for a 100,000 square foot retail center currently under construction at 46100 and 46408 Warm Springs Boulevard in the Industrial Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15315, Minor Land Divisions.
Project Planner – Cliff Nguyen, (510) 494-4769, cnguyen@fremont.gov

Recommended Action: Approve, based on findings and subject to conditions.

Item 2. FREMONT CHRISTIAN SPORTS NETTING – 4760 THORNTON AVENUE – (PLN2009-00167) – to consider a Zoning Administrator Permit to replace sports field netting at ballfields located at 4760 Thornton Avenue in the Centerville Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15311, Accessory Structures.
Project Planner – Cliff Nguyen, (510) 494-4769, cnguyen@fremont.gov

Recommended Action: Approve, based on findings and subject to conditions.

4. ADJOURNMENT

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ZONING ADMINISTRATOR PERMIT

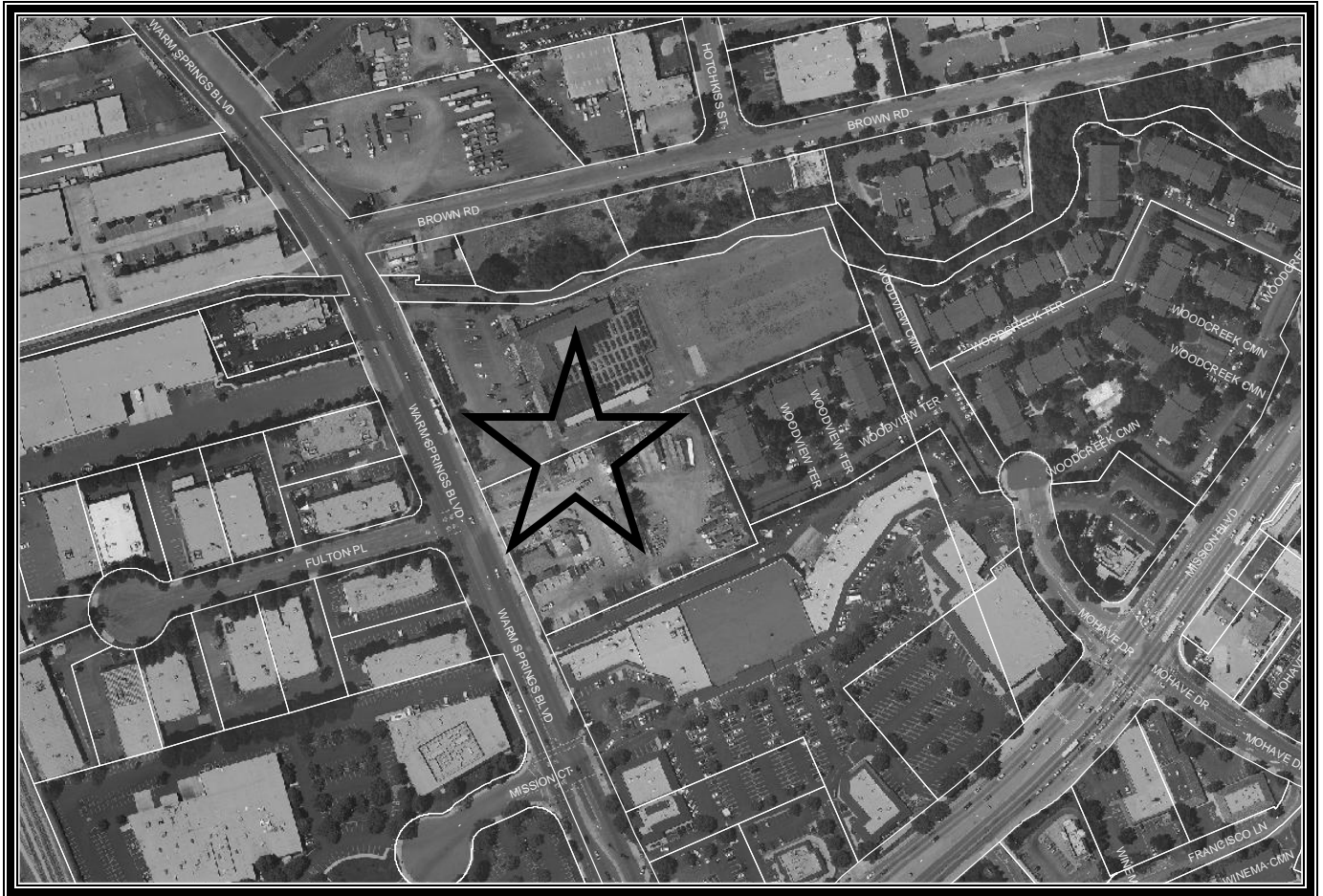
STAFF REPORT MARCH 16, 2009

Project:	FREMONT TIMES SQUARE – (PLN2007-00281)
Proposal:	To consider an amendment to an approved Zoning Administrator Permit (PLN2007-00281), to accommodate an amended Vesting Tentative Parcel Map 9629, to create three parcels with commercial condominiums for a 96,987 s.f. retail center currently under construction.
Recommendation:	Approve, based on findings and subject to conditions.
Location:	46100 and 46408 in the Warm Springs Planning Area. APNs: 519-1260-011-06 and 519-1260-010-02 (See aerial photo next page)
Area:	Eight buildings totaling 96,987 square feet of gross floor area on a 7.67-acre site
People:	Jeff Major, Barry Swenson Builder, Applicant Barry Swenson Builder, Owner Clifford Nguyen, Staff Planner (510) 494-4769; enguyen@fremont.gov
Environmental Review:	The proposed project is categorically exempt under Section 15315 of the Guidelines because it involves a minor land division in the form of a tentative parcel map.
General Plan:	Community Commercial
Zoning:	C-C, Community Commercial District

EXECUTIVE SUMMARY:

In June 2008, the City conditionally approved a Zoning Administrator Permit (ZAP) (PLN2007-00281) and a vesting tentative parcel map (VTPM) to allow a subdivision for condominium purposes for a new retail development that included eight buildings. While the applicant did not proceed forward to finalize the approval of the subdivision with a parcel map, construction of the site is underway. The site includes a large anchor building, which the applicant indicated would be difficult to sell (or lease), unless the City is willing to grant an amendment to the ZAP for an amended VTPM to create a separate parcel for the anchor building. To that end, an amendment to the ZAP and a new VTPM are requested. The current request would replace the June 2008 approvals to allow a new subdivision of the two existing parcels into three new parcels, of which two of the new parcels are for commercial condominium purposes. Staff recommends approval of the proposed project with conditions to allow a new subdivision of the site into three parcels with no more than 64 commercial condominiums.

Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North: Alameda County Flood Channel, single-family homes beyond
South: Retail commercial
East: Multi-family residential
West: Industrial, commercial

BACKGROUND AND PREVIOUS ACTIONS:

The site's history is summarized below.

1. As far back as 1939, historic aerial photographs show that the site was used as a rural residence that was later converted to a landscape materials sales office. The larger balance of the property was planted with orchards.
2. In December 1982, Navlet's Garden Center occupied the site, establishing a retail nursery and rockery. Navlet's recently closed their Fremont location in 2008 and the site was purchased by the applicant for its redevelopment with the new retail center.
3. In June 2008, the City conditionally approved a zoning administrator permit and a vesting tentative parcel map to allow a subdivision for condominium purposes for a new retail development that included eight buildings. The approval consists of combining the two existing parcels into one parcel for commercial condominium purposes. However, the vesting tentative parcel map approval was not finalized because the developer did not proceed with seeking approval of and recording of the parcel map.
4. In September 2008, the City issued building permits for construction of the new retail center. Construction of the center is underway and is estimated to be completed by late spring 2009.
5. In January 2009, the applicant requested an amendment to replace the previous June 2008 approvals with a new zoning administrator permit and vesting tentative parcel map which includes three new parcels. The proposed parcel map would create a parcel for the anchor building and two parcels for condominium purposes.

PROJECT DESCRIPTION:

To consider an amendment to an approved Zoning Administrator Permit (PLN2007-00281) and Vesting Tentative Parcel Map 9629 to create three parcels with commercial condominiums for a 96,987 s.f. retail center currently under construction. The proposed Parcel 1 would contain 42 condominiums within five buildings; Parcel 2 would contain no condominiums but a stand-alone anchor building; and Parcel 3 would contain 21 condominiums within two buildings.

PROJECT ANALYSIS:

General Plan Conformity:

The site has a General Plan designation of Community Commercial. Currently, the site is under construction and is being developed with eight new retail buildings totaling 96,987 square feet of retail space. The proposed retail uses are consistent with the land use designation and applicable goals and policies contained in the General Plan. The project's consistency with goals and policies are highlighted below.

Goal LE 3 (Local Economy): A hierarchy of well defined, vital commercial areas meeting the retail shopping, entertainment and service needs of Fremont residents.

Goal LU 2 (Land Use): *Commercial development focused in well defined commercial areas.*

Policy LU 2.21 (Land Use—Specific to Warm Springs): *New development shall be oriented toward integrating and connecting the designed CCC [community commercial center]. Site development planning should establish connections between parcels and development projects. Building orientation, setbacks, parking locations and building design shall be evaluated for how each element encourages continuity.*

Consideration of the proposed project would ensure the vitality of the new retail center managed under a single property owner's association. The retail center has been designed to meet the above goals and policies by redeveloping the site to provide new ownership retail opportunities within the focused commercial area of Warm Springs. The proposed amendment to the June 2008 zoning administrator permit and vesting tentative parcel map to create a separate parcel for the anchor building would not impact the approved building and site design under construction. As such, no modifications other than the proposed new subdivision are requested.

Zoning Compliance: The site is zoned C-C, Community Commercial. Pursuant to Sections 8-22135.1 [Condominiums and stock cooperatives for commercial uses.] and 8-1429 [Filing of tentative parcel maps.], an amendment to the June 2008 zoning administrator permit and an amended vesting tentative parcel map are required to permit the proposed project. A review of the proposed project must ensure:

- (1) That the project meets desirable physical and visual standards;
- (2) Responsible maintenance for structures, common spaces and facilities;
- (3) That the project is consistent with the general plan and with state law;
- (4) That purchasers of units are informed as to the physical conditions of the structure and on-site facilities.

The applicant has submitted the requisite materials and information for consideration of the project. Staff finds that the project meets the intent and purpose of the commercial condominium ordinance and conforms to the specified provisions that follow to ensure that the above objectives are met:

- a. *The provisions of Article 20 of this chapter relating to off-street parking and loading, and with the development policy for private vehicle accessways in effect at the time of approval of the project.*

Analysis: The site design has been previously approved in conformance with the City's off-street parking and loading requirements and policies. Construction of the site underway is in conformance with that approval.

- b. *A property owners' association shall be established. It shall assume continual maintenance responsibility for all common areas, landscaping, plumbing, fire protection water system, wiring, utility charges and exterior of the buildings.*

Analysis: Several conditions are included that would require the formation of a single property owner's association ensuring that the above provision is met. For the association, the applicant shall propose

Covenants, Conditions, and Restrictions (CC&Rs) applicable to all units and the common area(s) for the City's review and approval prior to final map approval.

- c. All electrical and mechanical equipment shall conform to the city codes in effect at the time of approval of the project.*

Analysis: All new buildings are required to be constructed to meet current electrical and mechanical equipment code requirements in accordance with the September 2008 issued building permit.

- d. The interior and exterior sound transmission standards shall be those in effect at the time of project approval, pursuant to the Housing Code (Title 25, California Administrative Code) and Chapter 1 of Title VIII (subdivision ordinance) of this Code.*

Analysis: All new buildings are required to meet acoustical requirements set forth in the environmental mitigated negative declaration made conditions of the original approval in June 2008.

- e. Central refuse and recyclable collection facilities shall be provided in accordance with section 8-22155. The maintenance of such facilities and the payment of the refuse and recyclable collection fees shall be the responsibility of the property owners' association.*

Analysis: All new buildings are required to be provided with sufficient refuse and recyclable collection facilities in accordance with the September 2008 issued building permit.

Upon issuance of a Zoning Administrator Permit Certificate, the applicant will request parcel map approval from the City Engineer pursuant to Section 8-1437. Conditions presented in Exhibit "C" are recommended to complete the parcel map approval process.

Parking: Per Fremont Municipal Code Section 8-22003(c) (3), parking is required at a ratio of one parking space per 250 square feet of gross floor area (GFA). The buildings total 96, 987 square feet; however, 2,487 square feet is dedicated to unusable space (e.g., mechanical space) and is reduced from the aggregate GFA applied to calculate the required parking. Based on this calculation, the 378 parking spaces (counting 5 parking stall credits for forty bicycle racks) provided meets the requirement.

Circulation: Street improvements are required and are currently being installed as part of the shopping center construction. The developer has fulfilled their requirement to dedicate right-of-way and install complete street improvements for Warm Springs Boulevard, by granting the necessary right-of-way and entering into an agreement and bonding for the required street improvements. Warm Springs Boulevard is an arterial roadway, with a right-of-way of 108' feet. In addition, a traffic signal to control traffic at the primary project driveway is being installed to bring intersection to acceptable operations of LOS A and LOS B during the AM and PM peak hours, respectively. The traffic signal shall be in place and operational prior to granting of occupancy approval and shall be implemented at the sole cost of the project proponent.

Applicable Fees:

This project is subject to Citywide Development Impact Fees. These fees include fees for fire protection, capital facilities and traffic impact. All applicable fees were paid at the fee rates in effect at the time the September 2008 building permit was issued.

Environmental Review: The proposed project is categorically exempt under Section 15315 of the California Environmental Quality Act (CEQA) Guidelines because it involves a minor land division in the form of a proposed parcel map. All applicable June 2008 mitigation measures adopted under the previous mitigated negative declaration pursuant to CEQA related to site development of the retail center remain valid and shall be complied with.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 412 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on March 4, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on March 4, 2009.

ENCLOSURES:

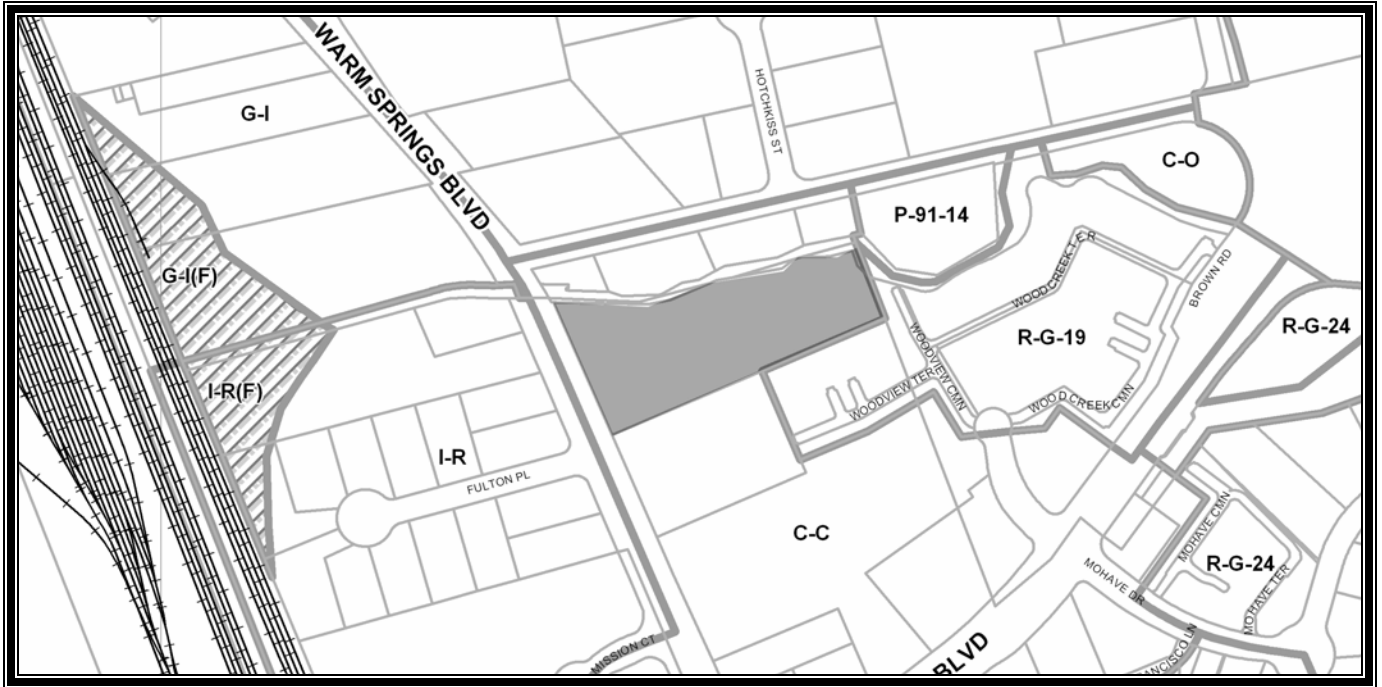
Exhibits:

Exhibit "A" Zoning Administrator Permit—Site, Elevation, and Speculative Floor Plans
Exhibit "B" Amended Vesting Tentative Parcel Map 9629 dated March 3, 2009
Exhibit "C" Findings and Conditions of Approval

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15315 of the Guidelines because it involves a minor land division in the form of a proposed parcel map.
3. Find the proposed project is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land use and Local Economy Chapters as enumerated within the staff report.
4. Approve the Zoning Administrator Permit to accommodate amended Vesting Tentative Parcel Map 9629, as shown on Exhibit "A" and Exhibit "B", respectively, subject to findings and conditions in Exhibit "C".

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

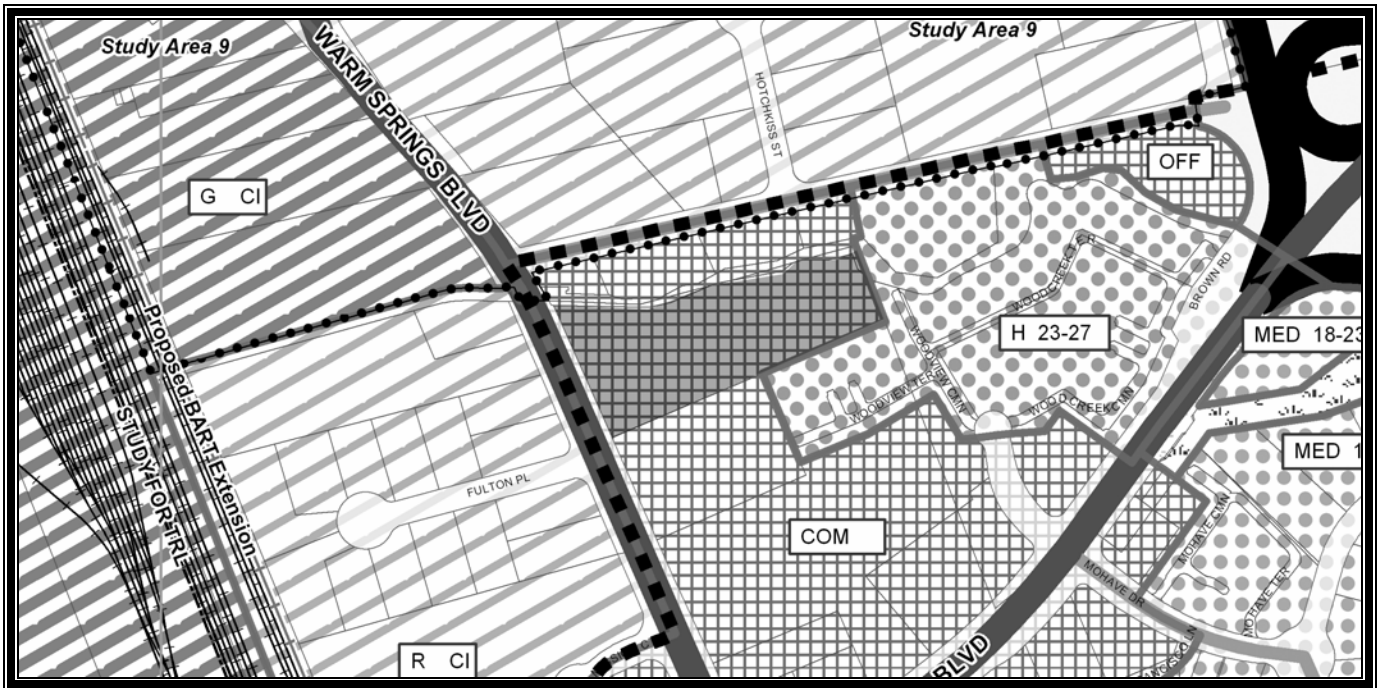


EXHIBIT “C”
Findings and Conditions of Approval
For PLN2007-00281
(ZONING ADMINISTRATOR PERMIT,
VESTING TENTATIVE PARCEL MAP 9629)
46100 and 46408 Warm Springs Boulevard
APNs: 519-1260-011-06 and 519-1260-010-02

ZONING ADMINISTRATOR FINDINGS FOR PROPOSED COMMERCIAL CONDOMINIUMS:

On the basis of the information submitted, and a project review to ensure conformance with the General Plan, Zoning Ordinance, and other development policies of the City of Fremont, the Zoning Administrator finds:

- a. That the site is suitable and adequate for the proposed use because the scope of the development proposal is consistent with the existing General Plan designation and Zoning District;
- b. That the proposed use and design would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system or other public facilities or services because project-specific traffic impacts have been analyzed, and a mitigation measure requires the installation of a traffic signal at the retail center’s primary driveway to satisfactorily mitigate the identified transportation impact to a less than significant level in accordance with the June 2008 Mitigated Negative Declaration for site development;
- c. That the proposed use would not have a substantial adverse economic effect on nearby uses because the modern-looking appearance of the retail center is compatible with the core Warm Springs’ commercial area. Several conditions are recommended requiring that the property owner’s association maintain the site in good condition.
- d. That the proposed use would not have a substantial adverse impact on the general welfare of persons residing in the community because the construction and intended retail uses of the building have been reviewed to ensure that all applicable building and fire codes have been met;
- e. That the design of the project as a modern-looking retail development is compatible with existing and proposed development within the district and its surroundings; and

PLANNING DIRECTOR FINDINGS FOR VESTING TENTATIVE PARCEL MAP 9629:

On the basis of the information submitted, and a project review to ensure conformance with the General Plan, Zoning Ordinance, and other development policies of the City of Fremont, the Planning Director finds:

- f. The proposed map satisfies the requirements and conditions imposed by the Subdivision Map Act and the City of Fremont Subdivision Ordinance, because the procedural requirements of the

Map Act are being followed and the proposed subdivision map for commercial condominium purposes complies with applicable zoning standards.

- g. The proposed subdivision, together with the provisions of its design and improvement, is consistent with the General Plan land use designation of Community Commercial for the project site.
- h. The site is physically suitable for the type and proposed commercial/retail development, because, consistent with the General Plan and Community Commercial District, the site at 7.67 acres is large enough to sufficiently accommodate the intensity of the proposed retail project.
- i. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, because the site was developed as an in-fill parcel and has been continuously used as a commercial site. There is no potential for the project to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- j. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, because the review process of the subdivision has taken those concerns into consideration and has found the proposal in conformance with the City of Fremont's policies.
- k. The design of the subdivision and the type of improvements will not conflict with any easements required for the public at large for utilities or access within the proposed subdivision. The applicant will be required to install a traffic signal and include several provisions in the property owner's CC&Rs to ensure that any easements required for utilities or access are maintained in perpetuity.

ZONING ADMINISTRATOR CONDITIONS (Must be satisfied on an on-going basis):

1. All conditions contained herein shall supercede the previous June 2008 zoning administrator permit and vesting tentative map approvals.
2. Except as modified by the conditions herein, the project shall substantially conform to Exhibit "A" (Zoning Administrator Permit—Site, Elevation, and Speculative Floor Plans). Exhibit "B" (Vesting Tentative Parcel Map 9629 dated January 21, 2009), and all conditions of approval set forth herein.
3. Parcel 1 shall contain a maximum of 42 condominiums for and within five buildings; Parcel 2 shall contain no condominiums for or within the stand-alone anchor building; and Parcel 3 shall contain a maximum of 21 condominiums for and within two buildings.
4. The applicant shall comply, on an ongoing basis, with all relevant provisions of the Fremont Municipal Code, including the specific requirements of FMC 8-22135.1 ("Condominiums and stock cooperatives for commercial and industrial uses"), and State and federal law.
5. In accordance with Fremont Municipal Code §8-22559, conditional approval of Zoning Administrator Permit (ZAP) PLN2007-00281 shall run concurrently with Vesting Tentative

Parcel Map 9629 for a maximum period of two years. Should no final parcel map be filed and recorded within the two year period, the ZAP shall be considered null and void. Should a parcel map extension be requested, the ZAP may also be extended subject to revised and/or new conditions of approval.

6. Continued conformance with the remaining project-specific mitigation measures adopted in June 2008 under the environmental Mitigated Negative Declaration for site development, as follows:

Mitigation Measure (MM) #1: Dust (PM₁₀) Control Measures; Prior to the issuance of a permit the following measures shall be included in a dust prevention plan and noted on the approved plans with a designated contact person for on-site implementation the dust control plan.

- a) Water all active construction and site preparation work areas at least twice daily and more often during windy periods.
- b) Cover all hauling trucks or maintain at least two feet of freeboard.
- c) Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- d) Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- e) Hydroseed or apply non-toxic soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- f) Enclose or cover securely exposed stockpiles.
- g) Replant vegetation in disturbed areas as quickly as possible.
- h) Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

Mitigation Measure (MM) #4. Install a traffic signal to control traffic at the primary project driveway to bring intersection to acceptable operations of LOS A and LOS B during the AM and PM peak hours, respectively. Install a signal interconnect system as part of the signal installation. The facility shall be in place and operational prior to granting of occupancy approval and shall be implemented at the sole cost of the project proponent.

7. No trespassing/loitering signs shall be posted at entrances of parking lots and other pedestrian access points with a letter of enforcement on file with the Police Department.
8. All entrances to parking areas shall be posted with appropriate signs per CVC §22658(a) to assist in the removal of vehicles at the property owner association's request.
9. Parking lots, driveways, passageways, recesses and grounds contiguous to building shall be provided and maintained with enough lighting of sufficient wattage to provide adequate illumination to make clearly visible the presence of any person on or about the premises during the hours of darkness and provide a safe secure environment. It is recommended that exterior lighting be either metal halide or high-pressure sodium.

10. Prior to final parcel map approval, the applicant shall create a single property owner's association consistent with State law and City requirements to assure effective management and maintenance of the property. All vested interests owning real property within the proposed three-parcel subdivision with commercial condominiums shall be a party to a created single property owner's association. No vested interest can petition to leave the property owner's association without first notifying the of the City's Zoning Administrator in writing 30-days prior to submitting its formal petition to the association.
11. The property owner's association shall be operated by a qualified professional property management company, hired by the association, which shall be responsible for continual maintenance of all common areas, including, but not limited to, parking lots, landscaping, plumbing, storm drain, sewer, fire protection water systems, wiring, trash enclosures, utility areas, utility charges, vehicle/pedestrian circulation areas, exteriors, facades and roofs.
12. The applicant shall establish the association initially with adequate reserves to maintain major components and assure continued operation of the center within accepted professional standards, providing adequate assessment procedures for said continuing obligations.
13. For the single property owner's association, the applicant shall propose Covenants, Conditions, and Restrictions (CC&Rs) applicable to all parcels within Parcel Map 9629, its condominium unit, and its common area(s) for the City's review and approval prior to final map approval.
14. For site and building signage, the applicant shall request approval of a Planned Sign Program for the retail center prior to requesting any building permits for building or site signage in accordance with the zoning ordinance.
15. The following shall be incorporated in a CC&Rs document for the single property owner's association which all vested parties of Parcel Map 9629 shall be a party to:
 - A. The property owners' association shall be responsible for the provision and maintenance the onsite water systems (potable, fire and irrigation), stormwater treatment facilities, sewer systems, and all other private utilities that are shared as one common system. As these utility systems are not public utilities, the association must provide for their maintenance and upkeep.
 - B. The property owners' association shall be responsible for the provision and maintenance of central refuse and recyclable collection facilities as they are initially constructed and as they may be needed for future uses. The payment of the refuse and recyclable collection fees shall be the responsibility of the property owners' association.
 - C. The property management association shall operate the site as a unified, well maintained, and cohesively operated property. Exterior renovations, remodeling, and site improvements shall be undertaken in a holistic manner, including consistent architecture and design on all facades and roofs.

- D. A restriction that states that if a vested interest of real property within the property owner's association petitions to leave the association after receiving association and City's approval, that member must separate the onsite private utilities, which include but are not limited to, potable water and fire systems from the adjoining parcels. That member must establish its own private utilities in conformance with the requirements of the then utility provider.
- E. The property owners' association shall be responsible for submitting a Zoning Administrator Permit Amendment review application prior to scheduling votes for proposed site modifications or changes to the CC&Rs that could reasonably affect compliance with conditions required herein.
- F. Preamble: The property has been developed with a balance of floor area and parking to accommodate a range of uses typical for shopping centers in the Community Commercial areas. If, however, the center were to attract a larger number of users (e.g., restaurants, medical offices, grocery stores, etc) that have a higher than average parking demand, there will not be ample parking for all users. Unlike traditional shopping centers where one or two owners have control over the tenant mix, this approval authorizes a shopping center that will be eventually owned by and managed by a larger group of owners and their designated management association. This ownership arrangement creates the potential for each unit owner to act independently in the sale of condominium units which, left unmanaged, could be detrimental to the remaining owners as it relates to parking.

Condition: The property owners association, through provisions within the CC & R's, shall be given authority to manage the tenant mix in a manner to ensure that there is not an over concentration of high parking demand users in this shopping center. The developer, shall diligently work to sell units to users with the goal of establish an initial mix of uses that is complimentary and consistent with available parking. The overall shopping center parking standard of 1 space per each 250 gross square feet assumes a complimentary mix of uses and shared parking. As such there shall be no assigned or reserved parking within the development. The association shall be provided with the following information for comparative purposes:

City parking ratios:

- ◆ Restaurants: 1 space/100 square feet,
- ◆ Medical offices, grocery stores: 1 space/200 square feet
- ◆ General offices and retail/service uses: 1 space/300 square feet

- G. The property owners' association shall maintain up-to-date listing of the available parking and type of use within each unit. This information shall be made available in a timely manner upon receipt of requests from owners/prospective owners who will be submitting applications for business licenses and/or tenant improvements to the City.
- H. In order to achieve consistency in the project and ensure sufficient parking, no mezzanines will be allowed, regardless of whether such additional floor area may be

- identified for storage, office or another use unless additional parking as appropriate is provided. This provision shall, however, not restrict the installation of racking/storage systems within individual units.
- I. Inclusion of provisions for non-exclusive use of the common areas in perpetuity, including reciprocal access and parking agreements and common use of refuse and recycling enclosures or appurtenances.
 - J. A Planned Signing Program applicable to the entire property shall be maintained in perpetuity.
 - K. Tenants (and/or owners) must store their shopping carts within their tenant spaces. If for some reason, at some future time tenants are unable to store carts inside their stores, then a screen wall shall be located in front of the store, completely screening the carts and not interrupting the flow of pedestrian movement.
 - L. The applicant and/or tenant(s) shall install and maintain an electronic cart system to ensure that the carts do not leave the parking area.
 - M. Tenants shall be advised that storage of stock/merchandise delivery storage containers is prohibited anywhere outside of the buildings exterior.
16. Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
- a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturdays & Holidays, 9 a.m. to 6 p.m.
 - c. Sundays, no construction allowed.
17. The zoning administrator permit shall be subject to revocation by the Zoning Administrator, Planning Commission, or City Council at such time as any of the following conditions are found to exist:
- a. Conditions of approval have not been fulfilled;
 - b. The use has resulted in a substantial adverse effect on the health and/or general welfare of users of adjacent or proximate property;
 - c. The use has resulted in a substantial adverse impact on public facilities or services.
18. The developer and property owner of the site shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The city shall promptly notify the provider(s) of any such claim, action or proceeding. The city shall

have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

END OF ZONING ADMINISTRATOR PERMIT CONDITIONS.

CONDITIONS OF APPROVAL FOR AMENDED VESTING TENTATIVE PARCEL MAP 9629

19. All conditions contained herein shall supercede the previous June 2008 vesting tentative map approval.
20. The project shall conform to all companion conditions related to the Zoning Administrator Permit and Exhibit "A" (Zoning Administrator Permit—Site, Elevation, and Speculative Floor Plans), and all conditions of approval set forth herein and Exhibit "B" (Vesting Tentative Parcel Map 9629 dated March 3, 2009)
21. Approval of this Vesting Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act. This tentative map shall expire twenty-four (24) months after the date of tentative map approval unless tentative map extensions are approved in accordance with the Subdivision Map Act.
22. The developer shall dedicate right-of-way and install complete street improvements for Warm Springs Boulevard across the project frontage. Warm Springs Boulevard is an arterial roadway, with a right-of-way of 108' feet.
23. Access considerations for the on-site circulation system require space to be reserved for the movement of fire-fighting and emergency vehicles for the protection of both private property and the public. Dedication of emergency vehicle access easements (E.V.A.E.) on the final parcel map will be required. The easement geometrics are to provide for a 20-foot inside wheel turning radius and shall be subject to the approval of the City Engineer.
24. The subdivider is required to provide a cash payment to the City of Fremont for digital imaging of the recorded parcel map. The exact amount of this fee is determined by the number of pages in the final parcel map. The subdivider is also required by ordinance to provide the City with a mylar copy of the recorded parcel map subsequent to its recordation.
25. In accordance with the State Subdivision Map Act, the subdivider shall indemnify and hold harmless the City of Fremont or its agents, officers, or employees to attack, set aside, void or annul an approval of the City of Fremont, advisory agency appeal board, or legislative body concerning a subdivision, which action is brought within the time period provided for in Section 66499.37.
26. The City of Fremont shall promptly notify the subdivider of any claim, action, or proceeding to attack, set aside, void or annul its approval and shall cooperate fully in the defense.

27. When the preceding conditions of Tentative Parcel Map 9629 approval have been met, an original parcel map tracing, conforming to the approved tentative parcel map, can be submitted for approval by the City Engineer. This map will be required to conform to all requirements of the State Subdivision Map Act and local ordinance.

28. Fire Department Condition: The applicant shall provide a minimum of two sectional post indicator valves located in the parking area which can isolate each parcel from one another in case of fire or emergency fire line break.

END OF VESTING TENTATIVE PARCEL MAP 9629 CONDITIONS.

Note: For final map approval, the following information must be submitted to the Engineering Division with the application:

- a) Submit two (2) check prints of the final parcel map to the Engineering Division for examination.
- b) A cash deposit in the amount of \$4,000 to cover the cost of checking the final parcel map was submitted on July 21, 2008. After the map check is completed, the actual cost of the checking will be determined and either a refund of your deposit in excess of the actual cost will be issued or an additional billing will be made, if the actual cost exceeds \$4,000.
- c) Submit one (1) hard copy and an electric copy (MS Word document preferred) of the project CC&R's for review.
- d) A title report issued by a First American Title dated July 3, 2008, was submitted with the developer's previous submittal. Please submit an updated report if there have been any substantial changes since July, 2008.
- e) Submit one (1) copy of the traverse closure calculations (computer printout), using the map dimensions, of each lot, the parcel map boundary, monument lines and ties to monuments and easements.
- f) The developer will be notified by the Engineering Division when to submit two original mylar tracings for final Parcel Map 9828.
- g) Provide copies of all recorded easements and deeds, including those that have recently been recorded on the property as a result of the recent construction.

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ZONING ADMINISTRATOR PERMIT

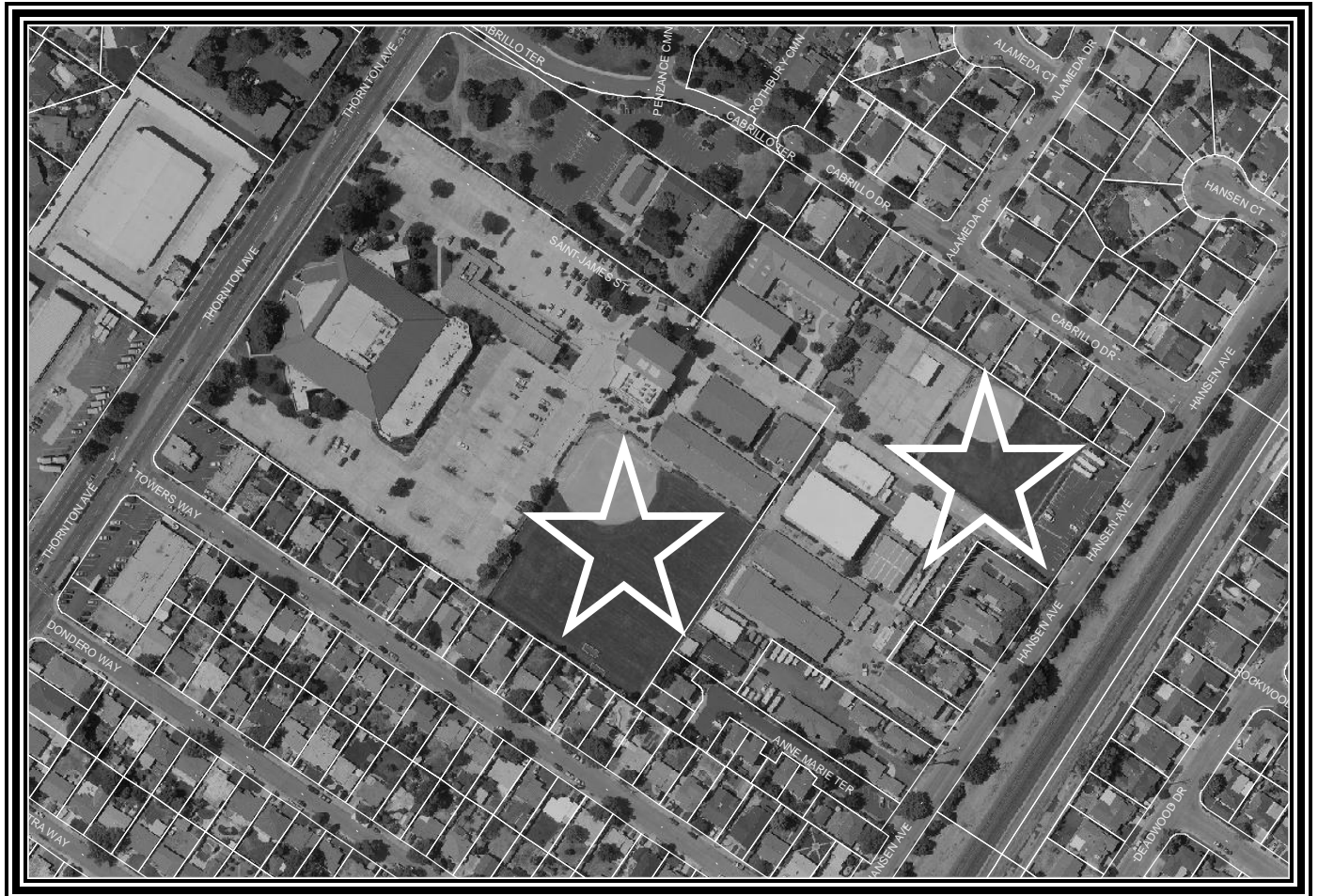
STAFF REPORT MARCH 16, 2009

Project:	FREMONT CHRISTIAN SPORTS NETTING – (PLN2009-00167)
Proposal:	To consider a Zoning Administrator Permit to replace sports field netting at ballfields.
Recommendation:	Approve, based on findings and subject to conditions.
Location:	4760 Thornton Avenue in the Centerville Planning Area. APNs: 501-0455-029-02; 030-01 (See aerial photo next page)
Area:	Site totals 15.97 acres
People:	John Eshelman, Applicant Fremont Christian School, Owner Clifford Nguyen, Staff Planner (510) 494-4769; cnguyen@fremont.gov
Environmental Review:	This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15311, Accessory Structures.
General Plan:	Low Density Residential 5-7 dwelling units per acre
Zoning:	R-1-6

EXECUTIVE SUMMARY:

Fremont Christian School requests approval of an indefinite-term Zoning Administrator Permit to permit the replacement of sports netting for two ball fields under reconstruction. Approval of the project would allow the placement of new netting atop new masonry walls and inner cyclone fencing that surrounds each ball field. Staff recommends approval of the project, based on findings and subject to conditions.

Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: Religious facility (St. James Parish)
- South: Single-family residences
- East: Hansen Avenue, Union Pacific Railroad
- West: Thornton Avenue, commercial and multifamily residences

BACKGROUND AND PREVIOUS ACTIONS:

The project site's history is summarized below.

1. In October 1982, the Planning Commission certified an environmental negative declaration (EIA-82-31) to approve a Conditional Use Permit (U-82-11) and a Variance (V-82-18) to permit a new sanctuary building and related school facilities for the Fremont First Assembly of God Church. Subsequent approvals allowed for an expansion of an existing structure, a new activity building, several modular classroom buildings, a restroom building, and a picnic pavilion.
2. In August 1984, the Zoning Administrator approved a permit for a modular classroom building for childcare purposes.
4. In August 2000, the Zoning Administrator approved a permit to allow seven temporary modular structures on the site as an interim measure to replace the abrupt displacement of six classroom facilities that were destroyed by fire in July 2000. Other previous minor land use entitlements were approved, including a permit to allow roof-mounted telecommunications wireless facilities above the Church's sanctuary building.
5. In June 2001, the Planning Commission approved a Conditional Use Permit amendment (PLN2001-00266) to allow the construction of a new 14,000 square foot two story classroom/office building to permanently replace the classroom facilities destroyed by fire. The building included six classrooms, two new computer labs and school administration offices. The site area affected by the fire was redesigned to include a drop-off area and new parking spaces. These improvements have all been completed.
6. In January 2009, the City received an application for a Conditional Use Permit amendment for the reconstruction of eight classroom buildings that presently exist on the site. The application is currently under review by City staff.

PROJECT DESCRIPTION:

The applicant requests an indefinite-term Zoning Administrator Permit to permit proposed sports netting for two existing ball fields located at the Fremont Christian school.

PROJECT ANALYSIS:

General Plan Conformance:

The General Plan land use designation for the project site is Residential 5-7 dwelling units per acre. The proposed project is consistent with the existing General Plan land use designation because schools and religious facilities are permissible uses within the R-1-6 Single-Family Residence District. All ancillary facilities, including the ball fields, were permitted under the previous conditional use permit approval and amendments thereto.

Zoning Regulations:

Project Analysis:

Pursuant to Sections 8-22212 and 8-22213 of the Fremont Municipal Code, a fence can be constructed to heights in excess of those allowed in the zoning district, particularly for athletic facilities. Sports netting is considered a form of open fencing that is subject to these provisions. Though the City's Planning Director has discretionary approval authority over the proposed sports netting, this authority has been delegated to the Zoning Administrator.

The former sports netting that surrounded each ball field for at least 23 years has recently been removed as part of the School's effort to renovate both fields. The ball fields are located directly adjacent to existing single-family homes, as well as existing (and future) structures on the school site. Construction of the new netting to replace the old netting is needed to avoid the disruption of preventing balls entering neighboring properties and, in turn, would reduce impacts on the neighborhood and structures. The proposed netting is in a matte-black color, knotted 1 ¾ square-inch. The netting is approximately 12 feet in height above 8-foot masonry walls adjacent to the outfield and homes, and 20 feet in height above 10-foot cyclone fencing within the infield area. The height and selected color of the netting should not cause an adverse visual impact on the existing neighborhood. It is consistent in terms of height, color, and design with the old netting.

Based on the circumstances above, staff finds that an indefinite-term permit is warranted and is necessary for the construction of the netting proposed for the two ball fields.

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15311, Accessory Structures.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 197 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on March 4, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on March 4, 2009.

ENCLOSURES:

Exhibits:

- Exhibit "A" Site Plan and Fence/Sports Netting Elevations
- Exhibit "B" Findings and Conditions of Approval

Informational Items:

1. Sample of Sports Netting

RECOMMENDATION:

1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15311 of the Guidelines because the proposed project consists of construction of minor structures accessory to the operations of an existing educational facility.
3. Find PLN2009-00167 is in conformance with the relevant provisions contained in the City's existing General Plan.
4. Approve PLN2009-00167, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B" to permit an indefinite-term Zoning Administrator Permit for the proposed sports netting.

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan

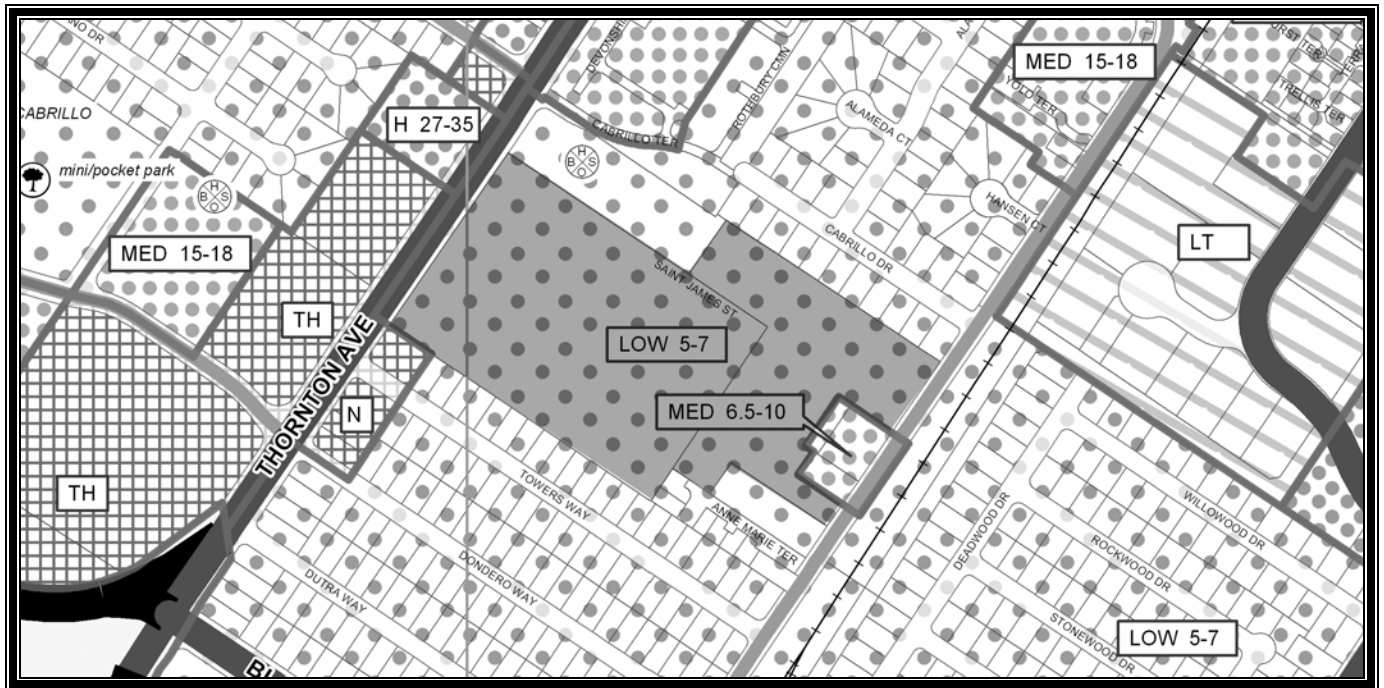


EXHIBIT “B”
Findings and Conditions of Approval
For PLN2009-00167, Fremont Christian School Sports Field Netting
Indefinite-term Zoning Administrator Permit
4760 Thornton Avenue
APNs: 501-0455-029-2; 501-0455-030-1

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Zoning Administrator dated March 16, 2009, incorporated hereby.

Zoning Administrator Permit Findings Pursuant to Section 8-22212:

- a. The proposed sports netting will not create a safety hazard to pedestrians or vehicular traffic;
- b. The proposed sports netting is not located within the public right-of-way;
- c. The proposed sports netting does not exceed the height requirement within the triangular sight area as defined in subsection (c) of section 8-22209;
- d. The issuance of such a permit is reasonably necessary, by reason of special circumstances or conditions relating to the property because the sports netting for the two ball fields is needed to minimize impacts on adjacent residential properties and structures on- and off-site.
- e. The proposed sports netting would not substantially impair the utility or value of adjacent property or the general welfare of the neighborhood;
- f. The appearance of the sports netting is compatible with the design and appearance of existing buildings and structures in the neighborhood;
- g. The design of the sports netting has been minimize to the extent practicable so that it does not dominate the site or overwhelm adjacent properties and structures; and
- h. The orientation and location of the proposed sports netting is in proper relation to the physical characteristics of the site and the surrounding neighborhood.

CONDITIONS OF APPROVAL:

Prior to Issuance of building permit and a Zoning Administrator Permit Certificate:

1. The proposed sports netting height, design, and location shall be consistent with Exhibit “A” (Site Plan, Fence/Sports Netting Elevations).
2. The applicant shall submit plans to the City’s Plans and Permit Section for the addition of the sports netting above walls and cyclone fences that surround the two ball fields.

3. Minor deviations to the approved plans as shown in Exhibit "A" may be permitted, subject to the review and approval of the Zoning Administrator.
4. The Zoning Administrator shall issue a Zoning Administrator Permit Certificate upon compliance with all conditions provided herein.

On-going Conditions of Approval:

5. The proposed sports netting shall be maintained in good condition and replaced in kind as needed due to usage or wear. The Zoning Administrator may impose additional conditions to ensure that the sports netting is compatible with surrounding improvements and does not cause any adverse effects on the public health, safety or general welfare.
6. The Zoning Administrator Permit Certificate shall be subject to revocation or modification by the Zoning Administrator, Planning Commission, or City Council if the conditions of approval have not been fulfilled, or if the approval of the sports netting has resulted in a substantial adverse effect on the public health or general welfare.

END OF CONDITIONS.